

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928

MFA.No. 591 of 1999()

OPMV.2883/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA
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APPELLANT/3RD RESPONDENT:

THE ORIENTAL INSURANCE COMPANY LTD.,
MATTANCHERRY, KOCHI.

BY ADV. SRI.P.V.JYOTHI PRASAD
RESPONDENT(S):

1. MUHAMMAD, S/O.AYYUTTY,
NEDUMPARACHALIL HOUSE,
NELLIKUZHI.

2. MUHAMMAD @ UNNI, S/O.BAVA,
EDPPARAYIL HOUSE,
ELAMPRA.

*3.[K.M.HASSAN, S/O.MUSTHAFFA,
KOLLIMOOTIL HOUSE,
SOUTH MRADY, MUVATTUPUZHA.] * DIED.LRS IMPLEADED.

*ADDL.R4 TO R8 IMPLEDED.

“ 4. MRS. BEEVI, W/O.K.M.HASSAN,
KOLLIMOOTIL HOUSE,
SOUTH MARADY, MUVATTUPUZHA.

“ 5. K.H. SALEEM, S/O.K.M.HASSAN,
-DO- -DO.-

“ 6. K.H.SHAJI,
- DO- - DO-

“ 7. K.H.KAREEM, EDPPARAYIL HOUSE,
NEAR PANCHAYAT OFFICE,
NELLIKUZHI.

“ 8. K.H.SHAILA, W/O.JAFFAR,
PUTHEN VEETIL, VENGALLOOR,
THODUPUZHA.

*LEGAL REPRESENTATIVE OF THE DECEASED R3 ARE IMPLEADED AS ADDL.R4 TO
R8 AS PER ORDER DATED 28.6.2006 ON CMP.191/00.

ADV. SRI.T.O.XAVIER

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 23/11/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON C.M.P.NO.3773/99 IN M.F.A.591/1999

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DISMISSED.

ID/- K.HEMA, JUDGE.

23.11.2006

// TRUE COPY //

P.S. TO JUDGE.

K. HEMA, J.

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M.F.A. No. 591 of 1999

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Dated this 23rd day of November, 2006.

JUDGMENT

This appeal is filed by the Insurance Company. An award was passed against the appellant directing to pay Rs.35,000/- with 12% as compensation for the injury sustained by first respondent-claimant in a motor accident involving a jeep and a lorry. The Tribunal found that the incident occurred due to the negligence of the lorry driver and that the lorry was insured with the appellant. The said award is challenged in this appeal.

2. According to the claimant-first respondent, the accident occurred on 7.1.1995 at about 9.15p.m while he was travelling in a jeep. A lorry hit on the jeep and thereby the claimant sustained injuries. He was taken to the hospital and was admitted for 14 days. He had serious injuries. A claim was made against the driver, owner and the insurer of the lorry.

3. To prove the case of the claimant, he examined himself as PW1. Another person, who was travelling in the jeep was also examined as PW2. Exhibits A1 to A8 were marked on the side of the petitioner and Exts.B1 & B2 were marked on the side of the

respondent. The driver and owner of the lorry remained ex parte. On an analysis of the evidence on record, the Tribunal found that the lorry driver was negligent in driving the lorry which resulted the accident and hence the driver, owner and the insurer are liable to pay the compensation.

4. Learned counsel appearing for the appellant-insurance company vehemently contended that the insurance company is not liable to pay any compensation, since the accident occurred due to the negligence of the claimant himself. A petition was filed under section 170 of the Motor Vehicles Act before the Tribunal and it was allowed. On going through the pleadings and evidence, I find that the claimant has no definite case as to how the incident occurred. In the petition filed by the claimant, the manner in which accident occurred has not been stated.

5. It appears from the allegations made in the petition that he was travelling in a jeep and a lorry hit on the jeep and he sustained injury in the course of the said accident. It appears from the petition that there was collision between the jeep and the lorry. But, when the claimant was examined by the Doctor immediately after the incident he had a different version. As per the wound certificate Ext.A5, the injury was sustained while the injured was travelling in a jeep and his

hand hit against a log of wood in a lorry.

6. In the first information statement given by the appellant before the police, he stated that he was sitting behind the driver's side on the right side of the jeep and he had come into contact with the iron rod behind driver's seat while the lorry came and hit against his right hand and it resulted in a fracture. He had no case that the lorry hit against the jeep in Ext.A2 F.I. Statement. At the time of evidence, PW1 did not say as to how exactly the incident occurred. He deposed that he was travelling in a jeep while a lorry came in an over speed and hit against the jeep and he sustained fracture.

7. If the accident had happened by a hit of the jeep and the lorry, necessarily, the best evidence to prove the nature of injury will be the damage on the jeep and the lorry. PW1 has a case that both the vehicles were damaged. The report of the AMVI relating to lorry is marked on the side of the claimant and it shows that there was no damage on the lorry, as revealed from Ext.A4. Though PW2, an eye-witness also stated that there was damage on the jeep, nothing is brought out to show whether there was damage on the jeep. In the absence of any evidence to show any damage on the two vehicles which allegedly hit against each other, it cannot be said that the incident occurred as alleged by the claimant i.e., while the lorry hit

against the jeep in which he was travelling.

8. The appellant has not proved the case as alleged by him. There is also inconsistency in the version given by him to the police and to the doctor as it appears from the first information statement and in the wound certificate. The Tribunal held that in all possibility, load must have been protruding outside the lorry which hit on the right hand of PW1, though the claimant did not make any such statement in the evidence. The Tribunal thus travelled beyond the pleadings and entered a finding which is not supported by evidence.

9. It is to be noted that there is endorsement in Ext.A5 wound certificate that the wooden log had hit the hand as seen from the history and alleged cause of injury in the wound certificate. But wound certificate is not proved. It is also not in evidence as to who gave such statement and on what basis such an entry is made. Therefore, the contents of Ext.A4 regarding the manner in which the injury sustained cannot be treated as admissible evidence from which inference can be made that the incident would have happened when the wooden log protruding from the lorry hit against the claimant's hand. The claimant himself has no such case either in the petition or at the time of evidence to that effect.

10. It can also be seen that the Tribunal observed that had the

lorry driver kept safer distance from the jeep the accident would not have occurred, since the hand of PW1 will not stretch beyond half metre outside even if it is assumed that he had stretched his hand. This finding is also not based on any legally acceptable evidence. However, on going through the records and materials available before me, I find that there was no cross-examination from the side of the 3rd respondent to bring out the relevant contradictions and materials in the evidence of PW1 relating to earlier statements allegedly given by him to the police in Ext. A2 and wound certificate Ext.A5 etc. discussed above.

11. On failure to bring out the contradictions in the evidence, a witness cannot be said to be discredited as per law. The contradictions in the earlier statement and his attention must be put to the witness and drawn to such part of the statement and attention of the witness must be drawn to such part of the statement, as seen in Section 145 of Evidence Act. On the facts and circumstances of the case, I find that an opportunity has to be given to both sides to bring out the relevant materials in evidence so that the Tribunal can reach a right decision in the matter.

12. In the result, the award passed in this case is set aside. The case is remanded to the Tribunal for fresh consideration and disposal

after giving opportunity to both sides to adduce evidence only on the question of alleged contradictions. The court shall dispose of the case as expeditiously as possible and not later than three months from the date of receipt of a copy of the judgment. Parties shall appear before the Tribunal on receipt of notice to their respective counsel.

This appeal is allowed.

K. HEMA, JUDGE.

Krs.

K. HEMA, J.

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M.F.A. No. 591 of 1999

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Dated this 23rd day of November, 2006.

JUDGMENT